

Land Expropriation and Compensation Payment in Ethiopia: Review

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Abstract

In Ethiopia, land is the main economic, political, social and cultural asset. It is the crucial source of generating livelihood income for society. It remains an asset that farmers have to accumulate wealth and transfer the same to future generation. Rural farmers and pastoralists are guaranteed a plot of land free of charge while urban residents can secure the same through ground lease arrangements. Thus, this paper aimed to review the state of land expropriation and compensation payment in Ethiopia. Expropriation occurs when a public agency (for example, the provincial government and its agencies, regional districts, municipalities, school boards and utilities) takes property for a purpose deemed to be in the public interest, even though the owner of the property may not be willing to sell it. Thus, land expropriation to the periphery is aggravated by development projects such as industry, infrastructure, communication and road networks. Displacement due to land expropriation is more significant issue in developing countries than developed countries because, the majority of the people in developing countries live highly concentrated in the periphery depending on agriculture with fragmented land holdings. This is common in countries like Ethiopia where land remains government's property and amount of compensation paid depends on government's decision. The urban land lease policy is not very friendly to rural households land in general and the poor land holders in particular. The policy implementation process has not taken in to account the life of rural peasants living in vicinity of cities. As a result, the implementation of the policy has been marginalizing the rural settled peasant communities. The non-farm based economic sector was not able to absorb those displaced farmers, as most of them are unskilled labour. Thus, Land expropriation and compensation issues takes more policy and implementation emphasis.

Keywords: Land Expropriation, Compensation Payment, Displacement, and Land Use Right

1. Introduction

In rural residents of most developing countries, including Ethiopia, land is the main economic, political, social and cultural asset. It is the crucial source of generating livelihood income for society. It remains an asset that farmers have to accumulate wealth and transfer the same to future generation. Moreover, the issue of land has not simply remained to be an economic affair but also it is very much intertwined with the people's culture and identity. In a nutshell, land related issues in developing countries are the most sensitive part of overall development that government needs to consider (Girma, 2011).

In Ethiopia, land is the common property of the 'state and the people', and, hence, is not subject to sale, exchange or mortgage. Rural farmers and pastoralists are guaranteed a plot of land free of charge while urban residents can secure the same through ground lease arrangements. Rural farmers' right to the land is a kind of usufruct right, which merely gives peasants possessory or "holding" prerogatives, including the rights to use and enjoy, rent, donate and inherit the land. In urban areas, its dwellers may obtain land on 15-99 years lease agreements depending on the purpose for which the land is needed and such right may be freely transferable (Ibid).

Expropriation occurs when a public agency takes property for a purpose deemed to be in the public interest, even though the owner of the property may not be willing to sell it (BC-ECB, 1996). They also claimed that when the owner does not agree to sell the property to the public agency, either because of the amount of money offered, or for some other reasons, the law might authorize the agency to expropriate the land. Thus, one can argue that many rural people will soon face crises in their livelihood and expose to social and economic problems if the land expropriation continues to the periphery.

Eminent domain (Expropriation) refers to the power possessed by the state over all property within the state, specifically its power to appropriate private property for public use. The Governments therefore have the right of compulsory land acquisition, with compensation, for the broader public service (Deininger, 2003). However, as Kotey (2002: 203) has noted, the exercise of such power is not without controversy. The way in which many developing countries governments exercise this right, especially for urban expansion, undermines tenure security, and because often little or no compensation is paid, also has negative impacts on equity and transparency (Deininger, 2003). The effect is that there is massive encroachment by expropriated owners.

With the development of national construction and the boost of urbanization, the expropriation of country's collective land becomes necessary. At the same time, problems on the compensation to the land-lost farmers, the resettlements, the allocation of land's income and abuse expropriation are getting more and more

obvious. Among them, the compensation is the core issue of the land expropriation (Jianpeng, 2009). Displacement due to land expropriation is more significant issue in developing countries than developed countries because, the majority of the people in developing countries live highly concentrated in the periphery depending on agriculture with fragmented land holdings. This is common in countries like Ethiopia where land remains government's property and amount of compensation paid depends on government's decision. In many ways expropriation is a spontaneous phenomenon that leads to spontaneous growth displacing rural farming community (Tegege, 1999). These conditions may expose most of the displaced farming communities to various economic and social problems. In light of the above information, this paper assesses the state of land expropriation and compensation payments.

2. Methodology

This article is based on intensive literature review of published materials like books, articles and other scholarly materials

3. Results and Discussion

3.1. General Overview of Land Tenure Policy of Ethiopia

In 1975, the socialist derg regime that had overthrown the imperial regime of Haile Selassie profoundly altered the agrarian structure and the mechanisms of access to land. The "Public Ownership of Rural Land Proclamation" nationalized all rural land and set out to redistribute it to its tillers and to organize farmers in cooperatives, thereby abolishing exploitative landlord-tenant relations so pertinent under the imperial regime. Even though, with the defeat of the military socialist derg regime of Mengistu in 1991, the dissolution of farm collectives took place rapidly, there was limited change with regard to property rights to land – to the disappointment of many international donor agencies. In principle, the Transitional Government of Ethiopia did not question state ownership of land (Kassa Belay and Manig 2004). In its declaration on economic policy in November 1991 (Transitional Government of Ethiopia 1991), it announced the continuation of the land policy of the derg regime. The new constitution of 1995 approved and confirmed the state ownership of land in Ethiopia (FDRE, 1995).

3.2. Issues of Land Expropriation and Compensation

3.2.1. Land expropriation

Expropriation refers to the right of the nation or state, or of those to whom the power has been lawfully delegated, to condemn private property for public use, and to appropriate the ownership and possession of such property without the owner's consent on paying the owner a due compensation to be ascertained according to law (*Corpus Juris Secundum*) as cited in (Daniel, 2009).

Expropriating land holding means taking the rural land from the holder or user for the sake of public interest by paying compensation in advance by the relevant government bodies, private investors, cooperative societies, or other bodies to undertake development activities by the decision of government body vested with power (ANRS Proclamation No. 133/2006 Art. 2(18)) as cited in (Daniel, 2009).

Most countries have developed land expropriation laws to restrict their government's exercise of its eminent domain power and have accumulated instructive experience in implementing those laws. Such laws typically; define the cases in which the government can exercise its power, Describe the rights and participation of those persons, whose assets are being taken, define the lost assets for which compensation is payable and the level of compensation that is payable for those assets (ADB, 2006).

3.2.2. Compensation for expropriation

Compensation has largely been understood to refer to specific measures intended to make good the losses suffered by people displaced and/or negatively affected by the acquisition. Compensation usually takes the form of a one-off payment, either in cash or in kind and is principally about awards to negatively affected persons. The losses incurred by people affected by the creation of infrastructure such as project offices and township, canals, transmission lines and other activities are not usually properly accounted for and so these losses have not been adequately compensated. Similarly, the impact of the projects (e.g. dam) on the livelihoods of the downstream population and on people losing lands and livelihoods due to land acquired for compensatory afforestation has not been properly assessed and compensated (Anuar *et al*, 1998).

3.3. Expropriation for Public Purposes in Different Countries

The notation of public purpose had given a stationary definition. The right to expropriate property is not absolute; international law places limitations on governments' discretionary powers in this regard. The 1962 United Nations (UNs) General Assembly Resolution on Permanent Sovereignty over Natural Resources (GA Res. 1962: Paragraph 4) stated that expropriation "shall be based on grounds or reasons of public utility, security, or the national interest which are recognized as overriding purely individual or private interests, both

domestic and foreign. This means that expropriation is *prima facie* lawful, provided that individual acts of expropriation meet the conditions established by international law (Treeger, 2004). Mainly, expropriation is intended to facilitate achievement of public purposes. In certain cases, expropriations of privately owned land are intended to address “pressing security needs.” In addition, certain abandoned properties should be expropriated for public uses. Other reasons also justify the need to expropriate land, such as when foreign nationals possess excessive land, landlords mistreat workers, *etc.* (USAID, 2005).

Kotey (2002) argues that acquisition in the public interest could mean acquisition by government for public bodies and statutory corporations, but also for private companies and individuals for purposes which although they may contribute to public welfare, confer a direct benefit, including profit, on the user. Hotels, private houses, real estate development, banks, filling stations *etc.* fall into this category (*see also Antwi et al., 2004*). This agrees with the wider ambit under which public interest can be considered to be ‘any right or advantage which ensures or is intended to ensure to the benefit generally of the whole people of Ghana. This provides a wide array of situations for which compulsory acquisition can be undertaken and is prone to abuse. The 1992 Constitution of Ghana posits a different regime for compulsory acquisition from the period before the Constitution. Whereas the constitution provides that any property compulsorily taken possession of or acquired in the public interest or for a public purpose shall be used only in the public interest or for the public purpose for which it was acquired and that where the property is not used for such purposes, the pre-acquisition owner shall be given the first option for acquiring the property and shall on such re-acquisition refund the whole or part of the compensation paid to him there is no such provision in the pre-1992 compulsory acquisition laws (Wordsworth, 2009).

Article 14(3) of the German constitution provides that “expropriation shall only be permissible in the public interest.” The public interest requirements have been interpreted to mean that expropriation cannot be undertaken solely for the benefit of the state’s commercial interests or those of a private person. It is possible, however, for a private person to be benefited from an expropriation as long as the expropriation is undertaken in the execution of public necessity. Expropriations for the purpose of land reform have also entered in to case law in Austria, the Council of Europe and the United States. Those decisions are summarized as follows: “Generally, the position is that a broad, general program of land reform can be in the public interest and that individual expropriations would be for a legitimate purpose if they form part of such a program, even though the intension is to give or transfer the expropriated land, in terms of that program, to a private person.” (Treeger, 2004)

Generally in order to achieve the goal of land expropriation for of public interest, public participation is necessary to ensure that the compensation is just and the purposes of land expropriation are for public interest. But this may not rely on most developing countries. In line with this, FAO (2007) reported that the rural people in developing countries are often far away from many important decision making processes. These people should be informed with appropriate information and included in decision making processes when there is possibility of impacts in their life. Public participation is simply a process of taking part in different spheres of societal life: political, economic, social, cultural and others. Therefore public participation is necessary to ensure that the compensation is just and the purposes of land expropriation are for public interest.

3.4. International Practices and Evidences on Compensation Payment

Most countries constitution have requirement for paying compensation when the government expropriate private assets for public purposes. In the United States (US), the US constitution requires “just compensation” for all takings of private property. The Philippine constitution similarly requires that, “payment of just compensation must be made.” Brazil’s constitution also contains a “just compensation” clause. In Cambodia, the constitution mandates that the state make “fair and just compensation” for taking possession of land from any person as cited in (ADB, 2006). Thus, national state should make payment in a currency that can be readily used, that it should reflect the full value of the expropriated property, perhaps incorporate an element for future lost profits, and that it must be handed over within reasonable time after the expropriation, otherwise interest should be paid. Developing countries have objected this formula, for it requires them to pay out substantial capital sums for every expropriation (USAID, 2005).

Based on constitutional requirements, many countries have developed standards for determining “just compensation”. Most high and middle income countries with well functioning legal system have adopted “fair market value” of the expropriated asset as the standard for determining compensation for state expropriations. The fair market vary is commonly defined “the amount that the land might be expected to realize if sold in the open market by a willing seller to willing buyer.” The underlying reason for adopting the fair market value standard is that the market is an objective gauge for assessing the value of the land (ADB, 2005).

Some countries have developed variety of mechanisms to compensate landowners in excess of market value because of the involving nature of taking. Great Britain provides for special compensation when expropriation of agricultural land disturbs a farmer operation. Likewise, in Germany, when an expropriation divides agricultural land, the government must pay additional compensation based on the following: Increased

time required for the farmers' road travel and preparation of machinery, damage due to detours, increased boundaries on the land, and by worsened alignment of the land (Christian, 1998)

3.5. Compensation and Expropriation in Ethiopia

Under the constitution of Ethiopia, Article 40(3), Land vested in the state and in the people of Ethiopia. According to this article, every citizen has the right to acquire and use the land, but impossible to sale. The constitution of FDRE also provides that, government may expropriate private property for public purpose subject to compensation, which is equivalent to the value of property under Article 40(5).

Under the land policy of Ethiopia, land needed by government for development work may become the subject of compulsory acquisition. The enabling legislation is the proclamation to provide for the expropriation of land holdings for public purpose and payment of compensation (Proc. No. 455 /2005).

Proclamation No. 455/2005 provided for compensation for property situated on land and permanent improvement to such land equal to the value of labour and capital expended. But in practice local governments are not compensating for worked such as land clearance, irrigation ditches and terracing, stating that the productivity approach reflects this investments. In addition, no compensation is paid for indigenous trees and communal land (Andrew, 2007)

Public purpose is widely applied in Ethiopia, including for private commercial purpose, unlike other countries, and has no right of appeal the "purpose" of the expropriation as Proc. No. 455/2005. Countries like South Africa specify that public purpose include an expropriation by the state for the purpose of caring out administration obligations such as buildings, roads, *etc.* Though compulsory acquiring of rural land compensation payment for expropriation legalized, there is a huge gap between the compensation principle in Ethiopia and other countries. Land expropriation in our country encountered resistance from farmer because of unfair compensation and lack of training before and after compensation.

4. Conclusions

Even the simplest of expropriations is not simple. Although the determination of compensation arising from the compulsory taking of property may be straight forward, the fact that a property owner's common law right to enjoy private property has been disturbed inevitably complicates matters.

Most countries constitution have requirement for paying compensation when the government expropriate private assets for public purposes. Thus, national state should make payment in a currency that can be readily used, that it should reflect the full value of the expropriated property, perhaps incorporate an element for future lost profits, and that it must be handed over within reasonable time after the expropriation, otherwise interest should be paid. But, developing countries have objected this formula, for it requires them to pay out substantial capital sums for every expropriation

Under the constitution of Ethiopia, Article 40(3), Land vested in the state and in the people of Ethiopia and every citizen has the right to acquire and use the land, but impossible to sale. A rural land holder whose land has been presently expropriated shall, in addition to the compensation payable under article of Proclamation number 455/2005, be paid as displacement compensation which shall be equivalent to ten times the average annual income secure during the five years preceding the expropriation of the land. This implies that compensation payment in Ethiopia is too little to sustain life after eviction

Public purpose is widely applied in Ethiopia, including for private commercial purpose, unlike other countries, and has no right of appeal the "purpose" of the expropriation as Proc. No. 455/2005. Though compulsory acquiring of rural land compensation payment for expropriation legalized, there is a huge gap between the compensation principle in Ethiopia and other countries. Land expropriation in our country encountered resistance from farmer because of unfair compensation and lack of training before and after compensation.

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